IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. .

PETER P. CORCORAN,

Petitioner,

against

ROYAL DEVELOPMENT COMPANY,

Respondent.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 121 F. 2d 957. The opinion of the District Court is reported in 35 F. Supp. 400.

Jurisdiction.

The decree of the United States Circuit Court of Appeals was entered in the Office of the Clerk of the United States Circuit Court of Appeals for the Second Circuit, on August 27th, 1941.

Jurisdiction to review this case is found in the provisions of Section 240a of the Judicial Code; U. S. C. 28: 347.

Statement of Facts.

The principal facts are stated in the foregoing petition.

Specifications of Error.

The Circuit Court of Appeals erred in affirming the decree of the District Court appealed from.

ARGUMENT.

I.

This is an action for the administration by a court of equity of the distribution of the assets of a corporation in dissolution. The plaintiff seeks no personal judgment; demands no personal relief. The measure of the amount in controversy is therefore not the size of the plaintiff's claim against that corporation but the value of the estate to be administered.

In *Utah Fuel Co.* v. *National Bituminous Coal Commission*, 306 U. S. 56, this Court said at page 60:

> "* * * The jurisdiction of a District Court is to be 'determined by the allegations of the bill, and usually if the bill or declaration makes a claim that if well founded is within the jurisdiction of the Court it is within that jurisdiction whether well founded or not.' * * *"

A perusal of the complaint will disclose that this action was not instituted by the plaintiff for the recovery of the debt due him from the defendant, nor does the plaintiff seek any personal relief. The plaintiff asks the court to undertake the administration of the estate on behalf of all creditors of the defendant.

On December 4th, 1939, the board of directors of the defendant voted in favor of its dissolution and the distribution of its assets. On August 6th, 1940, the action of the defendant's board of directors was duly ratified by the stockholders of the defendant. Thenceforth the defendant has existed solely and only for the collection and distribution of its assets.

Wallamet Falls Co. v. *Kittridge*, 5 Sawy 44.

In equity the defendant became trustee for its creditors and stockholders, and the assets are trust funds which it holds for their benefit. The defendant, however, denies that there are creditors and threatens to distribute the assets solely to the stockholders. The plaintiff alleges that the defendant has creditors and that the claim of those creditors amounts to $1,121,000.00 exclusive of interest, and that if interest be added to that claim, the corporation is insolvent. Manifestly, if the assets should be distributed to the stockholders to the exclusion of the creditors, those creditors will suffer irreparable injury. A ground for the intervention of equity exists and the aid of equity in such circumstances may be invoked by any creditor in behalf of all creditors. The appeal to the Court here is to restrain the distribution by the defendant until the rights of all parties are determined, *and then to direct that the distribution be made in accordance with the decree of the Court.*

Fisk v. *The Union Pacific Railroad Company*, 10 Blatch. 518.
Conro v. *Gray*, 4 How. Prac. (N. Y.) 166.
Innes v. *Lansing*, 7 Paige (N. Y.) 583.

It should be remembered that this action was instituted not for the dissolution of a corporation, but for the administration of the liquidation of a corporation which had voluntarily voted its own dissolution. The assets of a

corporation in dissolution are trust funds, entitled to the protection of a court of equity.

Bacon v. *Robertson,* 18 How. (U. S.) 480.
Curran v. *Arkansas,* 15 How. (U. S.) 304.
Mumma v. *Potomac Co.,* 8 Pet. 281.

In *Mellen* v. *Moline Malleable Iron Works,* 131 U. S. 352, this Court said at page 367:

> "* * * Besides, the removal of alleged liens or incumbrances upon property, the closing up of affairs of insolvent corporations, *and the administration and distribution of trust funds,* are subjects over which courts of equity have general jurisdiction." (Italics supplied.)

In *Broughton* v. *Pensacola,* 93 U. S. 266, this Court said at page 268 as follows:

> "The ancient doctrine, that, upon the repeal of a private corporation, its debts were extinguished and its real property reverted to its grantors, and its personal property vested in the State, has been so far modified by modern adjudications, that a court of equity will now lay hold of the property of a dissolved corporation, and administer it for the benefit of its creditors and stockholders. * * *"

The determination of who are creditors and the amount of their claims and the relative rights between creditors and stockholders, are but an incident in the administration of that estate.

Pennsylvania Steel Company v. *New York City Railway Company,* 198 Fed. 721.

Where the object of the action is the administration and distribution by a court of equity of trust funds, the amount in controversy is measured by the size of that trust fund.

In *United States Radiator Corporation* v. *Doody*, 5 F. Supp. 471, the defendant, on the complaint of a simple creditor whose claim against the defendant amounted to less than $3000.00, consented to the appointment of a receiver and to the administration of its assets by the District Court. A motion was made (not by the defendant but by a creditor) to dismiss the complaint on the ground that the court had never acquired jurisdiction because the plaintiff's claim amounted to less than $3000.00. In overruling the motion, Dickinson, D. J., says at page 472 as follows:

> "* * * One of the instances in which it has jurisdiction is what we know as diversity of citizenship cases. Here this diversity exists. It is, however, under the act of Congress (Jud. Code §24 [28 USCA §41]) limited to the class of cases in which 'the sum in controversy' exceeds $3,000. In this case the averred sums due the plaintiffs did not reach the sum of $3,000, and hence it is urged this court had no jurisdiction. The answer made to this is that the bill concerns itself, not with the claims of the plaintiffs, but with the value of the receivership assets, and that the latter far exceeds the required jurisdictional sum. The question before us therefore resolves itself into the question of which of these sums determines the jurisdiction of the court. It has been held in this district that it is the value of the receivership assets which determines jurisdiction. * * *"

In *Towle* v. *American Building, Loan & Investment Society*, 60 Fed. 131, the defendant, on complaint of one of its stockholders, consented to the administration of its assets by the court. A motion was made to vacate the re-

ceivership on the ground that the court lacked jurisdiction because the claim of the plaintiff did not amount to the then jurisdictional amount of $2000.00. In denying the motion, Grosscup, D. J., said at page 134:

> "It is urged, however, that the federal court has no jurisdiction, because there is no controversy between the complainant and the defendant, and, if there were, it is not shown that it exceeds $2000.00 in amount. It is sufficient to say that whenever any property or claim of parties capable of a pecuniary estimation is the subject of litigation, a controversy, within the meaning of the judiciary act, is disclosed. In this case the entire assets of the society are brought into court for administration, and are, therefore, the matters in dispute or controversy."

In *Jones* v. *Mutual Fidelity Co.*, 123 Fed. 506, Bradford, D. J., said at page 514:

> "* * * The fact that a less sum would suffice to pay in full the pecuniary demand of a suitor and thereby extinguish his right to maintain suit is not in all cases determinative of the nonexistence of the jurisdictional amount. Frequently the value of the property and rights constituting the subject of litigation, the possession, enjoyment or other disposition of which it is the object of the suit to control or affect, and not the value of the suitor's interest or claim, or the existence of actual or threatened damage to him, determines for jurisdictional purposes the amount of the matter in dispute. In many cases where one has a given demand or interest which serves as the foundation or cause of his action the existence of jurisdiction may absolutely depend on the object of the suit and the nature of the relief sought. Thus in case of a nuisance, if one sues at law for damages on account of the injury

sustained by him, the existence of the jurisdictional amount will depend on the sum in good faith claimed in the declaration. But if a bill in equity be filed for the purpose of abating or enjoining the erection of a nuisance, consisting of a structure, the value of the structure, and not the pecuniary damage suffered by the complainant, will determine the existence of the jurisdictional amount. Mississippi & Missouri Railroad Company v. Ward, 2 Black, 485, 17 L. Ed. 311; Rainey v. Herbert, 55 Fed. 443, 5 C. C. A. 183. So, in Putnam v. Timothy Dry-Goods & Carpet Co. (C. C.) 79 Fed. 454, it was held that on a bill brought on behalf of all creditors, for the administration of a trust fund, the value of the matter in dispute for jurisdictional purposes was the amount of the fund. And it also has been decided that, in a suit for the appointment of a receiver of an insolvent corporation and a full and final administration of its assets, the amount of the matter in dispute is determined by the value of the property to be administered. Towle v. American Bldg., Loan & Inv. Soc. (C. C.) 60 Fed. 131; Taylor v. Decatur Mineral & Land Co. (C. C.) 112 Fed. 449. * * *"

In *Taylor* v. *Decatur Mineral & Land Co.*, 112 Fed. 449, Toulmin, D. J., said at page 449:

"My conclusions on the points raised by the demurrers under consideration are:

"1. That the amount in dispute is sufficient to give the court jurisdiction. The amount in dispute is the value of the property and assets of the defendant which the bill seeks to have administered by the court. Towle v. Society (C. C.) 60 Fed. 131; Putnam v. Carpet Co. (C. C.) 79 Fed. 454; Gibson v. Shufeldt, 122 U. S. 27, 7 Sup. Ct. 1066, 30 L. Ed. 1083; Handley v. Stutz, 137 U. S. 366, 11 Sup. Ct. 117, 34 L. Ed. 706."

In *Putnam* v. *Timothy Dry-Goods & Carpet Co.*, 79 Fed. 454, Clark, D. J., said at page 455:

> "* * * As the bill is brought to administer a trust fund, and on behalf of all creditors, I think the cases fully establish the proposition that the fund to be administered determines the question of jurisdiction. * * *"

See also:

Clay v. *Field*, 138 U. S. 464.
Hartford Life Insurance Company v. *Ibs*, 237 U. S. 662.
Supreme Tribe of Ben Hur v. *Cauble*, 255 U. S. 356.
Smith v. *Swormstedt*, 16 How. 288.

Merely because the distributive share of the plaintiff may be less than $3000.00 exclusive of interest and costs, does not alter the rule that the amount in controversy must be determined by the size of the estate to be administered.

In *Davies* v. *Corbin & Others*, 112 U. S. 36, each of the defendants therein had recovered a separate and distinct judgment, the aggregate of all the judgments being more than $5000.00. Action was instituted to compel the county to levy a tax for the payment of the amounts due the judgment-creditors. The dispute arose with respect to the collection of those taxes and the defendants applied for a peremptory writ of mandamus in order to enforce the collection of the taxes. The writ was granted and an appeal taken, and the objection was made that the appeal would not lie because the amount in controversy did not exceed the sum of $5000.00. In overruling the objection, this court said at page 41 as follows:

> "* * * The value of the matter in dispute is measured by the whole amount of the tax, and not by the separate parts into which it is to be divided when collected. * * *"

In *Handley* v. *Stutz*, 137 U. S. 366, an action was instituted to recover from certain stockholders the value of the stock for which they had paid nothing. In overruling the objection to the exercise of jurisdiction on the ground of the lack of jurisdictional amount, Gray, J., said at page 369 as follows:

> "The trust fund so administered and ordered to be distributed by the Circuit Court amounting to much more than $5000, the appellate jurisdiction of this Court is not affected by the fact that the amounts decreed to some of the creditors are less than that sum. * * *"

In this case, the District Court said as follows (R. 26):

> "* * * The case of United States Radiator Corporation v. Doody, 5 F. Supp. 471, is not to the contrary. There the Court held, in an equity case where plaintiff demanded the appointment of a receiver against the defendant and the defendant interposed the usual answer confessing, that that amounted to a waiver of any want of equitable jurisdiction. Here no receivership was sought and no answer confessing has been filed."

The attempted distinction between the United States Radiator case and the case at bar is untenable. It proceeds from a misinterpretation of the trust doctrine in its application to corporations.

In the absence of statutory regulations, a corporation in the normal exercise of its functions is vested with the same rights and dominion over its property as an individual. The trust doctrine comes into existence only when the corporation has ceased to function normally. In the case of insolvent corporations, the court upon assumption of jurisdiction will administer the assets of that corporation

as a trust fund. The trust comes into existence not upon the occurrence of the insolvency, but upon the assumption of jurisdiction by the court. Upon assuming jurisdiction, the court will then administer the estate of such insolvent corporation as a trust fund.

Graham v. *Railroad Co.*, 102 U. S. 148.
Hollis v. *Briarfield Coal & Iron Co.*, 150 U. S. 371.

The court, however, will not assume jurisdiction except at the instance of the proper party and under established rules of equity jurisprudence, the appeal for the exercise of administrative powers with respect to an insolvent corporation can only be made by a judgment-creditor with execution returned *nulla bona*.

Pusey & Jones v. *Hansen*, 261 U. S. 491.

However, the defendant may waive the requirement that the plaintiff must be a judgment-creditor with execution returned *nulla bona* and in that event the court will assume jurisdiction and administer the assets of an insolvent corporation as a trust fund.

Hollis v. *Briarfield Coal & Iron Co.*, 150 U. S. 371.

That is exactly what happened in the United States Radiator Corporation case.

With respect, however, to the dissolution of corporations, the trust doctrine comes into existence immediately upon dissolution and jurisdiction is assumed by equity because of the existence of that trust.

In *Updike* v. *United States*, 8 F. (2d) 913, the court said at page 917 as follows:

> "It must be conceded that if the corporation was subject to this tax, and if its property distributed upon dissolution constitutes a trust fund on behalf of credi-

tors or those entitled to be paid out of its assets, the stockholders who received its property in distribution must be held to respond to the extent of their receipts under such distribution. The trust fund doctrine has been held not to apply to solvent going concerns; but dissolution, in this respect, has the same effect as insolvency. Broughton v. Pensacola, 93 U. S. 266-269, 23 L. Ed. 896; McDonald v. Williams, 174 U. S. 397-403, 19 S. Ct. 743, 43 L. Ed. 1022. Its property then becomes a trust fund for the benefit of creditors and those sustaining a like position under the law; and, if that property has been distributed to stockholders, it remains impressed with the same trust. * * *"

In *United States* v. *Fairall*, 16 F. (2d) 328, Hand (Learned), C. J., said at page 328 as follows:

"If it is proper to treat the distributed assets of a dissolved corporation as a trust fund for creditors, plainly there can be no need of getting judgment against the corporation as a condition precedent to a suit like this. Where there is a trust, the creditor may follow the res, without more, Case v. Beauregard, 101 U. S. 688, 25 L. Ed. 1004. That was the theory on which Updike v. U. S., 8 F. (2d) 913 (C. C. A. 8), proceeded, and, so far as the doctrine of the trust fund is valid, the result is inescapable. * * *"

The objection that no receivership was sought in this proceeding is unsound. Receivership is an ancillary remedy adopted by courts of equity for the sequestration of the assets until the rights of the parties thereto are determined. The failure to apply for such an ancillary remedy does not deprive the court of jurisdiction.

In *Memphis Sav. Bank* v. *Houchens*, 115 Fed. 96, Thayer, C. J., said at page 108 as follows:

"* * * When a court of equity acquires full jurisdiction of the trustee in whom the legal title to trust property is vested, and other necessary parties are before the court, either in obedience to process or by their voluntary appearance, it can compel the trustee to dispose of the legal title and distribute the proceeds thereof as it may direct, although a part of the trust property may be located outside of the territorial limits of its jurisdiction. Such orders, and decrees and conveyances made in pursuance thereof, when they emanate from a court possessing full chancery powers, which has acquired jurisdiction of the trustee and other necessary parties, are respected everywhere as binding upon the parties to the litigation and their privies, although some of the property thereby affected may not be within the territorial jurisdiction of the court. * * *"

Both the Circuit Court of Appeals and the District Court were of the opinion that under the rule of this Court in *Lion Bonding & Surety Co.* v. *Karatz,* 262 U. S. 77, dismissal of the complaint was mandatory. That was an action by a simple creditor whose claim was $2,100.00, to impress a first lien upon the assets of a corporation. The distinction between the Lion Bonding & Surety Co. v. Karatz case and the instant case is contained in the opinion itself. At page 85 Brandeis, J., said:

"The only ground of jurisdiction alleged is diversity of citizenship. The facts specifically stated show that the amount in controversy was less than $3,000. Plaintiff's claim against the company was $2,100. He prayed that this debt be declared a first lien on the assets within the state. *His only interest was to have that debt paid.* The amount of the corporation's assets, either within or without the state, is of no legal signifi-

cance in this connection. Nor is the amount of its debts to others. The case is not of that class where the amount in controversy is measured by the value of the property involved in the litigation. Hunt v. New York Cotton Exchange, 205 U. S. 322, 335, 27 Sup. Ct. 529, 51 L. Ed. 821; Western & Atlantic R. R. v. Railroad Commission of Georgia, 261 U. S. 264, 43 Sup. Ct. 252, 67 L. Ed. —, No. 195, decided February 19, 1923. * * *" (Italics supplied.)

In this case, no personal relief was demanded and the petitioner's interest was to have the debts of all creditors paid. The instant case, therefore, was one "where the amount in controversy is measured by the value of the property involved in the litigation".

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers and to that end a writ of certiorari should issue.

Respectfully submitted,

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of New York, N. Y.,
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